

There are many interesting things to share today. Some main ones may be:  
1) HHS Secretary Thompson's response proposing an NPRM related to NDC's

2) There are two AFEHCT Gap Analysis documents available online that some may find helpful.

3) There is a court decision that some may find important in the case of United States of America v. Franklin Sutherland. Those interested may wish to review and follow the case in more detail. Please see the item: "HIPAA cited by Federal Judge".

Have a great weekend!!!!  
Ken

Please be sure to note that in some cases the information presented may be the opinion of the original author. We need to be sure to view it in the context of our own organizations and environment. In some cases you may need legal opinions and/or decision documentation when interpreting the rules.

Topics included below are:

- NDC code requirements
- [hipaalive] AFEHCT - Gap Analysis Material
- HIPAA cited by Federal Judge
- [hipaalive] CA vs Federal Regulations
- HIPAA Books
- [hipaalive] 10/16/02 billing consideration
- [hipaalive] HIPAA-Certified??
- [hipaalive] TCS Code Sets
- [hipaalive] HHS Office of Civil Rights questions
- [hipaalive] Conferences
- HIPAA related news stories
- [hipaalive] Medical records
- [hipaalive] SECURITY - Encryption & WAP services
- [hipaalert] HIPAAAlert: Volume 2 No. 9 July 11, 2001 (attached)

\*\*\*\*\* NDC code requirements  
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>>> Bill Braithwaite <[BBRAITHWAITE@OSASPE.DHHS.GOV](mailto:BBRAITHWAITE@OSASPE.DHHS.GOV)> 07/13/01  
03:40PM >>>  
Dear HIPAAcrats,

Sorry to bother you again so soon, but this news will be welcome to many.

In response to a letter from the National Committee on Vital and Health Statistics (NCVHS), HHS Secretary Thompson responded with a letter that says, in part, "Your recommendation to modify the standard (section 162.1002(c) in the Final Rule on Standards for Electronic Transactions) would retract the adoption of NDCs as the standard medical data code set for reporting drugs and biologics for certain standard transactions. ... We intend to pursue your recommendation by publishing a notice of proposed rulemaking. We expect to do this in the near future, so we can resolve the issues before substantial work by the industry to convert to NDCs is underway."

The full letter has been posted at  
<http://aspe.hhs.gov/admsimp/010529NCVHSLetter.htm>

Bill.

\*\*\*\*\* [hipaalive] AFEHCT - Gap Analysis Material  
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The Association for Electronic Health Care Transactions (AFEHCT) has two Gap Analysis Worksheets available online that may be of value:

AFEHCT ASPIRE WORKSHEET - HCFA 1500 to 837P Content Gap Analysis

AFEHCT ASPIRE WORKSHEET - HCFA 1450 (UB) to 837I Content Gap Analysis

They and associated material can be found at: [www.afehct.org/aspire.asp](http://www.afehct.org/aspire.asp)

\*\*\*\*\* HIPAA cited by Federal Judge  
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Please see the full text of this US District Court decision at:  
<http://www.vawd.uscourts.gov/opinions/jones/sutherland1.pdf>

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> From the CCH.com:

> HIPAA privacy regs cited in court decision by federal judge - In a  
> criminal case brought against a doctor accused of the unlawful  
> distribution and dispensing of controlled substances, a federal judge  
> relied upon the recently issued HIPAA privacy regulations in ordering that  
> the consent of patients be obtained before confidential information is  
> turned over pursuant to a subpoena. A magistrate judge had ordered the  
> hospital to turn over certain pharmacy records and the hospital moved to  
> quash the subpoena, arguing that compliance with the subpoenas would  
> subject it to civil liability for the production of privileged or  
> confidential patient information. The judge deferred to the regulations  
> because they "indicate a strong federal policy to protect the privacy of  
> patient medical records, and they provide guidance to the present case."  
> The judge relied on section 164.512(e) of the regulations, which defines

> when and how disclosures are permitted for judicial and administrative  
> proceedings. It provides that in response to a subpoena not accompanied  
by  
> an order of the court, as is the case here, a covered entity may disclose  
> protected health information only after receiving satisfactory assurance  
> "from the party seeking the information that reasonable efforts have been  
> made by such party to ensure that the individual who is the subject of the  
> protected health information has been given notice of the request." The  
> case is United States of America v. Franklin Sutherland  
>  
< [http://www.vawd.uscourts.gov/scripts/qfullhit.htw?CiWebHitsFile=/opinions](http://www.vawd.uscourts.gov/scripts/qfullhit.htw?CiWebHitsFile=/opinions/jones/sutherland1.pdf&CiRestriction=sutherland&CiQueryFile=/scripts/opinion.idq&CiBeginHilite=&CiEndHilite=&CiUserParam3=/opinion.asp&CiHiliteType=)  
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on.idq&CiBeginHilite=&CiEndHilite=&CiUserParam3=/opinion.asp&CiHiliteType=  
> Full>, DC VA, Dkt. Nos. 1:00CR00052 and 1:00CR00093, May 1, 2001.  
>

\*\*\*\*\* [hipaalive] CA vs Federal Regulations  
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\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

The California Healthcare Association (representing hospitals) is currently working on such a comparison for California. We plan to publish a manual for membership and other interested parties that outlines the HIPAA privacy rule (including the comparison with state law). The manual will be "rolled out" in conjunction with educational programs beginning later this year.

Sherreta Lane  
Director, Reimbursement & Economic Analysis  
California Healthcare Association  
(916) 552-7536

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I have performed a very comprehensive review of California law v. HIPAA. While most of California rules can be found in the Civil Code starting with section 56, the Dept. of Managed Health Care has some excellent information on patient rights. Also, the California Regulations contain a lot of info too.

Good luck.  
Scott Jordan  
PriMed Management & Consulting  
Hill Physicians Medical Group  
San Ramon, California  
925-552-6855

\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

Good morning. KindredHealthcare is participating in a couple of industry associations (Federation of America's Hospitals, and a Long Term Care Consortium - Nursing Center Division). We have floated to topic of jointly funding a state - federal assessment Vs. each company performing their own assessment. A representative from ACHA was to pursue this topic with some of the other associations to determine whether the different sectors of the healthcare industry would be interested in participating as well. I am to receive an update tomorrow afternoon. I will post update at that time.

\*\*\*\*\* HIPAA Books

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>>> [sdavis@odmhsas.org](mailto:sdavis@odmhsas.org) 07/13/01 07:55AM >>>

i am on a list-serv managed by the massachusetts health data consortium and in their last two 'newsletters' they've mentioned a couple of books that may be of interest:

3. The Resource Center has recently acquired HIPAA Compliance Handbook:  
> Electronic Transaction and Privacy Standards, published by the Aspen  
> Health Law & Compliance Center with contributions from several lawyers,  
> from the Privacy Association, and from the American Health Information  
> Management Association. The book includes a summary of the  
transactions  
> and privacy rules, a compendium of compliance checklists for such specific  
> topics as privacy standards, notice of information, privacy policies and  
> procedures, portable computer security, and Internet security. There are  
> also sample contractual agreements, an outline for a security audit  
> procedure, and a model job description for a Chief Privacy Officer.  
> Consortium members are eligible to borrow this book.  
> <http://www.mahealthdata.org/mhdc/mhdc2.nsf/documents/RC-New>

6. The Consortium's Resource Center has added HIPAA Compliance Handbook:  
> Final Rule on Standards for Privacy, an accompanying volume to HIPAA  
> Compliance Handbook: Electronic Transaction and Privacy Standards,  
> published by Aspen, which was highlighted in the June 28 issue of this  
> newsletter. The first part of this volume presents a discussion of the  
> background and applicability of the Rule, as well as a section-by-section  
> summary. The second part contains HIPAA compliance tools, specifically  
> privacy assessment instructions, and a question and answer section  
> organized by sections within the Final Regulation. Consortium members may

> borrow this book.

> <http://www.mahealthdata.org/mhdc/mhdc2.nsf/documents/RC-New>

\*\*\*\*\* [hipaalive] 10/16/02 billing consideration

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HHS Response to Submitted Questions":

[begin quote]

Q: Can non-standard medical codes (codes such as J codes for drugs and home grown or local codes) be sent on electronic transactions submitted after the compliance date of 10/16/02 for dates of service prior to 10/16/02?

A [6/4/2001]: For dates of service prior to 10/16/2002, the compliance date for the adopted standard medical data code sets would not have been reached.

Therefore non-standard codes may be used for dates of service prior to 10/16/2002 on transactions submitted after 10/16/2002. Section 162.1000(a) requires covered entities to use the applicable medical data code sets "valid at the time the health care is furnished" for transactions they conduct after 10/16/2002. To determine which code set was valid at the time of service, the covered entity has to determine the validity dates "specified by the organization responsible for maintaining that code set" and determine whether the date of service falls within those dates.

[end quote]

- Zon Owen -

\*\*\*\*\* [hipaalive] HIPAA-Certified??

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\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

There's no such thing as HIPAA-certified today in terms of security or privacy. However, individuals may have credentials that are relevant to HIPAA. The CISSP certification is the international information security certification that best fits the information security officer role. Check it out at [www.isc2.org](http://www.isc2.org). And while you may not be able to find a CISSP for your organization, it makes a lot of sense to build into the security officer role the expectation that the individual will work toward that credential over the next 2-3 years.

Having worked in healthcare forever, I find that lack of understanding of the infosec field is one of our bigger stumbling blocks right now. It is a professional speciality with its own body of knowledge.

Please don't underestimate the importance of choosing someone with the right skills to be your information security officer. (And, no, I'm not looking for a job!)

Kate Borten, CISSP  
President, The Marblehead Group  
1 Martin Terrace  
Marblehead, MA 01945

\*\*\*\*\* [hipaalive] TCS Code Sets  
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\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

From Page 50324 of the Federal Register publication of the TCS rule (in the Preamble):

[quote]

(3) Inpatient Hospital Services. The standard code set for these services is the International Classification of Diseases, 9th edition, Clinical Modification (ICD-9-CM), Volume 3 procedures, maintained and distributed by the U.S. Department of Health and Human Services. The specific data elements for which ICD-9-CM, Volume 3 procedures, is a required code set are enumerated in the implementation specifications for the transaction standards that require its use.

[end quote]

And from Page 50370, the actual regulatory text:

[quote]

Subpart J--Code Sets

Sec. 162.1000 General requirements.

When conducting a transaction covered by this part, a covered entity must meet the following requirements:

(a) Medical data code sets. Use the applicable medical data code sets described in Sec. 162.1002 as specified in the implementation specification adopted under this part that are valid at the time the health care is furnished.

(b) Nonmedical data code sets. Use the nonmedical data code sets as described in the implementation specifications adopted under this part that are valid at the time the transaction is initiated.

Sec. 162.1002 Medical data code sets.

The Secretary adopts the following code set maintaining organization's code sets as the standard medical data code sets:

(a) International Classification of Diseases, 9th Edition, Clinical Modification, (ICD-9-CM), Volumes 1 and 2 (including The Official ICD-9-CM Guidelines for Coding and Reporting), as maintained and distributed by HHS, for the following conditions:

- (1) Diseases.
- (2) Injuries.
- (3) Impairments.
- (4) Other health problems and their manifestations.
- (5) Causes of injury, disease, impairment, or other health problems.

(b) International Classification of Diseases, 9th Edition, Clinical Modification, Volume 3 Procedures (including The Official ICD-9-CM Guidelines for Coding and Reporting), as maintained and distributed by HHS, for the following procedures or other actions taken for diseases, injuries, and impairments on hospital inpatients reported by hospitals:

- (1) Prevention.
- (2) Diagnosis.
- (3) Treatment.
- (4) Management.

(c) National Drug Codes (NDC), as maintained and distributed by HHS, in collaboration with drug manufacturers, for the following:

- (1) Drugs
- (2) Biologics.

(d) Code on Dental Procedures and Nomenclature, as maintained and distributed by the American Dental Association, for dental services.

(e) The combination of Health Care Financing Administration Common Procedure Coding System (HCPCS), as maintained and distributed by HHS, and Current Procedural Terminology, Fourth Edition (CPT-4), as maintained and distributed by the American Medical Association, for physician services and other health care services. These services include, but are not limited to, the following:

- (1) Physician services.
- (2) Physical and occupational therapy services.
- (3) Radiologic procedures.
- (4) Clinical laboratory tests.
- (5) Other medical diagnostic procedures.
- (6) Hearing and vision services.
- (7) Transportation services including ambulance.

(f) The Health Care Financing Administration Common Procedure Coding System (HCPCS), as maintained and distributed by HHS, for all other substances, equipment, supplies, or other items used in health care services. These items include, but are not limited to, the following:

- (1) Medical supplies.
- (2) Orthotic and prosthetic devices.
- (3) Durable medical equipment.

[end quote]

Note that in Section 162.1002(b) the ICD-9-CM Volume 3 Procedure Codes are adopted for hospital inpatient reporting, while Section 162.1002(e) prescribes the requirements on the professional side. I realize that this does not answer your question, which related to the current industry practices, which probably vary considerably. But some of the other answers you have received suggest that a review of the actual regulatory language would be helpful.

- Zon Owen -  
(808)597-8493

\*\*\*\*\* [hipaalive] HHS Office of Civil Rights questions

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\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

The HHS Office for Civil Rights is responsible for implementing and enforcing the privacy regulations and is taking questions. You may submit them through this page on HHS' site: <http://www.hhs.gov/ocr/hipaa2.html>

Kim Diamondidis  
Web Assistant  
Phoenix Health Systems  
<mailto:kdiamondidis@phoenixhealth.com>

\*\*\*\*\* [hipaalive] HCCA Conferences

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\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

The Health Care Compliance Association has a HIPAA conference scheduled in San Diego for December 3-5. See <http://www.hcca-info.org/html/conferences.html#HIPAAForum> for details.

Bye for now -- Harry  
Harry E. Smith, CISSP  
Timberline Technologies LLC

\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

In the interim you might consider two conferences:

The Harvard Colloquium on Healthcare Transactions and Code Sets, Privacy, Data Security and HIPAA Compliance, August 19 - 22, 2001, Harvard University, Cambridge, MA, [www.ehc-info.com](http://www.ehc-info.com).



The Third National HIPAA Summit, October 24 - 26, 2001, Grand Hyatt,  
Washington, DC, [www.HIPAAsummit.com](http://www.HIPAAsummit.com).

Paul Smith  
DWT

\*\*\*\*\* HIPAA related news stories  
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There are a number of news stories here, some may be useful:  
<http://www.computerworld.com/resources/HIPAA>

Shneor Sherman  
Information Management Architecture Section  
IT Services Division  
(916)654-0784, fax (916)654-0339

\*\*\*\*\* [hipaalive] Medical records  
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from: [cherylservais@hotmail.com](mailto:cherylservais@hotmail.com)

\*\*\* This is HIPAALive! From Phoenix Health Systems \*\*\*

There are very specific federal regulations governing release of information for substance abuse patients. As an HIM, I have operated departments and the release of information function under these regulations. One thing I would caution against is "flagging" any record (paper or electronic) in any way to designate it as a record of a patient undergoing treatment for substance abuse. This in and of itself may be construed as a violation of the federal substance abuse record regulations. I always taught my staff to review the content of the record carefully (not only for indications of treatment of substance abuse, but also for any mention of HIV status or psychiatric treatment). In the case of the latter conditions, there were stringent state laws that covered their release. Your gut is right that you need to be careful.

Cheryl Servais  
President  
HIM Consulting Services

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One must look at who holds the privilege to withhold or release information. It is only the patient or the patient's representative, no one else. California has full access to records unless the psychotherapy notes may have

"a substantial risk of significant adverse or detrimental consequences" to a patient in seeing their own mental health records, including alcohol and

drugs. If the physician refuses, they must make a note with the reason for the refusal including what adverse consequences may develop. The patient can then request the record to be sent to a physician, psychologist, MFC or LCSW as the patient designates. The physician must comply with this request. This is under Health & Safety Code 123115 (b).  
I hope this helps.

Allan Tobias, MD. JD  
Healthcare Consulting & Law

\*\*\*\*\* [hipaalive] SECURITY - Encryption & WAP services \*\*\*\*\*

The security NPRM requires either encryption or access control for all transmitted data. See ? 142.308(d)(1)(ii):

"Each entity designated in ? 142.302 must assess potential risks and vulnerabilities to the individual health data in its possession and develop, implement, and maintain appropriate security measures. These measures must be documented and kept current, and must include, at a minimum, the following requirements and implementation features: ... (d) Technical security mechanisms (processes that are put in place to guard against unauthorized access to data that is transmitted over a communications network). (1) If an entity uses communications or network controls, its security standards for technical security mechanisms must include the following: ... (ii) One of the following implementation features: (A) Access controls (protection of sensitive communications transmissions over open or private networks so that they cannot be easily intercepted and interpreted by parties other than the intended recipient). (B) Encryption."

If acceptable access control mechanisms are in effect at the WAP gateway, then every point of the transmission path is protected either by SSL encryption, WAP Gateway access controls or WTLS encryption and you are in compliance with the regulations. There is an interesting article on all of this at <http://www.123wapinfo.com/faqs/security/index04.htm>.

Bye for now -- Harry

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